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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/685,134	10/14/2003	James F. Zucherman	KLYCD-05009US1	4485
7	590 11/29/2005		EXAM	INER
Sheldon R. Meyer FLIESLER DUBB MEYER & LOVEJOY LLP		IOV I I P	BAXTER, JESSICA R	
	dero Center, Fourth Flo		ART UNIT	PAPER NUMBER
	CA 94111-4156		3733	

DATE MAILED: 11/29/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

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A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION. Enablation of time may be willing under the provincion of 37 FR1 1306, in no event, however, may a reply be timely filled. If NO period for reply is specified above, the maximum statutory principle will explice SIX (8) MONTHS from the mailing date of this communication. Failure for reply which the sort occanidate point for risply timely and will explice SIX (8) MONTHS from the mailing date of this communication. Failure for reply which the sort occanidate point for risply timely and will explice SIX (8) MONTHS from the mailing date of this communication, even if timely filled, may reduce any statute part time of filling the mailing date of this communication, even if timely filled, may reduce any statute part time mailing filling the mailing date of this communication, even if timely filled, may reduce any statute part to the statute of the communication, even if timely filled, may reduce any statute part to the statute of the communication, even if timely filled, may reduce any statute part to the statute of the communication, even if timely filled, may reduce any statute of the communication of the statute of the communication is non-final. 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under Ex parte Quayle, 1935 C.D. 11, 453 O.G. 213. Disposition of Claims 4) Claim(s) 1-12 and 33-50 is/are pending in the application. 4a) Of the above claim(s) 33-46 is/are withdrawn from consideration. 5 Claim(s) 1-12 and 33-50 is/are rejected. 7) Claim(s) 1-12 and 47-50 is/are rejected. 8) Claim(s) 1-12 and 47-50 is/are rejected. 10 The drawing(s) filled on 1-13 is/are explication and/or election requirement. Application Papers 9) The specification is objected to by the Examiner. 10 Claim(s) 1-12 and 47-50 is/are rejected. 11 Claim(s) 1-12 and 47-50 is		Application No.	Applicant(s)	
Jessica R. Baxter Jessica R. Baxter Jay Jessica R. Baxter	Office Action Summan	10/685,134	ZUCHERMAN ET AL.	
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DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 03 October 2005 has been entered.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

- (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.
- 3. Claims 1-12, and 47-50 are rejected under 35 U.S.C. 102(e) as being anticipated by PG-PUB 2005/0113842 to Bertagnoli et al.

Bertagnoli discloses a tool for preparing vertebral bodies for an implant, the tool comprising a cutter body having a thickness dimension to distract the upper and lower vertebral bodies apart a distance to receive the implant (FIG. 25); a first cutting blade protruding upwardly from the cutter body and adapted to cut a groove in the upper vertebral body; and a second cutting blade protruding downwardly from the cutter body and adapted

to cut a groove in the lower vertebral body (blades 330), wherein the first and second cutting blades are parallel to one another; wherein the second cutting blade is spaced from the first cutting blade by the thickness dimension of the cutter body (Paragraphs 0078-0081).

Bertagnoli also discloses that the blade may have a protective element (Paragraph 0083).

Bertagnoli also discloses that the structure of the device is made to avoid impinging the nerves (Paragraph 0085).

Response to Arguments

4. Applicant's arguments with respect to claims 1-12 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jessica R. Baxter whose telephone number is 571-272-4691. The examiner can normally be reached on M-F 8:30AM - 5:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eduardo Robert can be reached on 571-272-4719. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3733

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Jessica R Baxter Examiner Art Unit 3733

Mb irb